Supreme Court, U.S.
FILED
SEP 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-2135

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

IN THE MATTER OF
LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN" DEBTOR,

LAVOYD WAYNE HARDIN,
a/k/a "BILL HARDIN",

PETITIONER.

VERSUS

GILBERT & COLVIN,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

JOSEPH W. COLVIN
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ATTORNEYS FOR RESPONDENT,
GILBERT & COLVIN and
CLIFFORD F. McMASTER, TRUSTEE

QUESTIONS PRESENTED FOR REVIEW

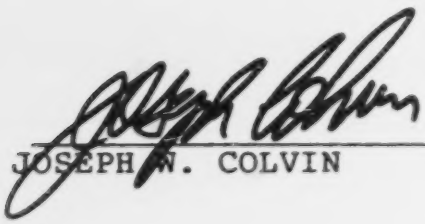
1. Whether the United States Court of Appeals for the Fifth Circuit erred in affirming the judgment of the United States District Court for the Northern District of Texas which granted an interim award to the Trustee for attorneys fees, commissions and expenses?

2. Whether the United States Court of Appeals for the Fifth Circuit erred in affirming the judgment of the United States District Court for the Northern District of Texas which granted an interim award of compensation and reimbursement of expenses to Gilbert & Colvin for their representation of the Trustee?

CERTIFICATE OF PARTIES TO THE PROCEEDING

The undersigned counsel of record for Gilbert & Colvin and Clifford F. McMaster, Trustee, Respondent, certifies that the following are parties to this proceeding:

1. Lavoyd Wayne "Bill" Hardin
2. Clifford F. McMaster
3. Gilbert & Colvin



JOSEPH W. COLVIN

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JUDGMENTS BELOW

FIFTH CIRCUIT APPEALS:

84-1037 - judgment of district court affirmed, 8/22/84

84-1250 - dismissed for want of prosecution, failure to file briefs, 5/22/84

84-1396 - appeal dismissed, 9/26/84

84-1614 - appeal held frivolous, 12/20/84

84-1615 - judgment of district court affirmed, 12/20/84

85-1686 - appeal dismissed, 2/24/86

85-1726 - judgment of district court affirmed, 3/17/86

STATEMENT OF JURISDICTION

This court has jurisdiction pursuant to 28 U.S.C. §1254.

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STATUTES AND REGULATIONS

28 U.S.C. §1254..... 4

11 U.S.C. §327..... 10

11 U.S.C. §330..... 9

28 U.S.C. §2101(c)..... 14

THE FOLLOWING CASES INVOLVE RELATED ISSUES:

Hardin v. Hardin, No. 84-1037, United States Court of Appeals for the Fifth Circuit (affirmed 8/22/84)

Hardin v. McMaster, No. 84-1250, United States Court of Appeals for the Fifth Circuit (dismissed 5/24/84)

Hardin v. McMaster, No. 84-1396, United States Court of Appeals for the Fifth Circuit (dismissed 9/26/84)

Hardin v. McMaster, No. 84-1614, United States Court of Appeals for the Fifth Circuit (affirmed 12/20/84)

Hardin v. Arthur, No. 84-1615, United States Court of Appeals for the Fifth Circuit (affirmed 12/20/84)

Hardin v. Gilbert & Colvin, No. 85-1686, United States Court of Appeals for the Fifth Circuit (affirmed 2/24/86)

Hardin v. Gilbert & Colvin, No. 85-1726, United States Court of Appeals for the Fifth Circuit (affirmed 3/17/86)

STATEMENT OF THE CASE

Petitioner's petition for certiorari results from seven (7) previously unsuccessful appeals in the United States Court of Appeals for the Fifth Circuit. The prior appeals bear the following numbers: 84-1037, 84-1250, 84-1396, 84-1614, 84-1615, 85-1686 and 85-1726. This petition for certiorari is based on the dismissal of Appeal No. 85-1686 on February 24, 1986, and the affirmation of the judgment of the district court in Appeal No. 85-1726 on March 17, 1986. The first appeal was from an order granting an interim award to the Trustee for attorney's fees, commissions and expenses. The second appeal was from an order granting an interim award of compensation and reimbursement of expenses

to Gilbert & Colvin for their representation of the Trustee.

SUMMARY OF THE ARGUMENT

The petition for certiorari should be denied because petitioner has not raised any issues attacking the two judgments that are the basis for the petition. Instead, he raises matters heretofore considered in prior appeals, and complains generally about the outcome of every proceeding in which he has been a party throughout the last decade, whether in the Courts of the State of Texas, the United States Bankruptcy Court, the United States District Court for the Northern District of Texas or the United States Court of Appeals for the Fifth Circuit. As petitioner is the debtor, he would only receive those funds remaining

after payment of all claims in his bankruptcy proceedings.

ARGUMENT

This litigation, seeking to challenge two separate judgments awarding fees and expenses to respondent and the Trustee of petitioner's bankruptcy estate, constitutes the latest in a long series of efforts by Lavoyd Wayne "Bill" Hardin to harass the Trustee of his estate and Trustee's counsel, Gilbert & Colvin, as well as to waste judicial time and resources by continuing to perfect frivolous and unmeritorious appeals. The judgments which form the basis for this petition may be found at pages 57-59, Petitioner's Supplemental Appendix.

The United States Bankruptcy Code, at 11 U.S.C. 330, provides that after notice

and hearing, the court may award to a professional person employed under §327 of that title, reasonable compensation for actual, necessary services rendered by such professional person or attorney, as the case may be, based on the nature, the extent and the value of the services, the time spent on such services and the cost of comparable services other than in a case under that title and reimbursement for actual and necessary expenses.

The United States Bankruptcy Code, at 11 U.S.C. §327, provides that:

> "(a) Except as otherwise provided in this section, the Trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the Trustee in carrying out the Trustee's duties under this title."
>
> "(c) In a case under Chapter 7 or 11

> of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor, in which case the court shall disapprove such employment if there is an actual conflict of interest."

The Trustee did so employ Gilbert & Colvin as counsel to represent him in appeals filed by petitioner on matters affecting the Trustee. No creditor objected to such employment and same was granted pursuant to court order. Gilbert & Colvin therefore has a vested interest in the protection of the order awarding them attorney's fees and expenses. The services for which Gilbert & Colvin were compensated entailed representation of Mr. Clifford McMaster before the United States Court of Appeals for the Fifth Circuit on appeals filed by petitioner in Case Nos. 84-1396, 84-1614 and 84-1615.

Respondent would show that in Appeal No. 84-1396, the United States Court of Appeals for the Fifth Circuit dismissed Mr. Hardin's appeal by Order entered September 26, 1984. The appeal was dismissed because Mr. Hardin transferred his interest in the real property which was in issue to Mr. J. A. Hardin, and therefore lacked standing to complain of the Order appealed from. Furthermore, Mr. J. A. Hardin had deeded the property to the Trustee, thus mooting the controversy.

In Appeal No. 84-1614, the United States Court of Appeals for the Fifth Circuit, by Order entered December 20, 1984, held that Mr. Hardin's appeal was frivolous in every respect.

The United States Court of Appeals for the Fifth Circuit, in Appeal No.

84-1615, ruled that the Order of the United States District Judge enjoining petitioner from harrassing the purchaser of 154 acres of land from the Trustee in petitioner's bankruptcy case was within the District Court's jurisdiction.

Appeal No. 85-1686 in which petitioner appealed from an order granting an interim award to the Trustee for attorney's fees, commissions and expenses was dismissed on the basis that petitioner's claim had no conceivable foundation in fact or law. Similarly, in Appeal No. 85-1726, the judgment of the District Court, awarding Gilbert & Colvin interim fees and expenses, was affirmed, the United States Court of Appeals for the Fifth Circuit stating that while it would not exercise its discretion to impose sanctions, further abuse of the appellate

process would not be tolerated (p. 57, Petitioner's Supplemental Appendix).

The petition for certiorari should be denied as petitioner is the debtor and lacks standing to complain of the payment of attorney's fees in a Chapter 7 bankruptcy proceeding. Petitioner neither asserts nor possesses a claim which would have parity or priority to the claims allowed by the Court.

The petition for certiorari should further be denied as petitioner is raising stale, unsuccessful appeals in conjunction with those alleged to form the basis for this petition. The petition for certiorari is only timely with respect to the judgments of February 24, 1986 and March 17, 1986, respectively, pursuant to 28 U.S.C. §2101(c).

Petitioner claims that he has been denied his constitutional right to the

assistance of counsel for his defense. Petitioner cites only criminal case authority for this proposition, and fails to recognize that no such right obtains in civil litigation. Furthermore, Petitioner was represented by counsel in his voluntary petition under the Bankruptcy Code and was represented by counsel in Appeal No. 84-1037 in the Fifth Circuit. Petitioner then dismissed his bankruptcy counsel and voluntarily elected to represent himself in these proceedings. Petitioner's claim that he was denied counsel relates to a proceeding to which he was not a party and which proceeding was appealed to the Fifth Circuit. Case No. 84-1396 was dismissed as moot and no writ was filed in this court.

Respondent would show that the fourteen (14) questions presented for review

by petitioner were addressed and rejected by the United States Court of Appeals for the Fifth Circuit in one or more of the aforementioned appeals, which raised issues either identical to or similar to those set forth by petitioner in the petition for certiorari.

Respondent would show that the petitioner has therefore not raised any issues germane to the judgments appealed, but is using the petition for certiorari in an effort to bring before this Court matters heretofore decided adversely to petitioner by the United States Court of Appeals for the Fifth Circuit. The petition for certiorari should, therefore, be denied.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,



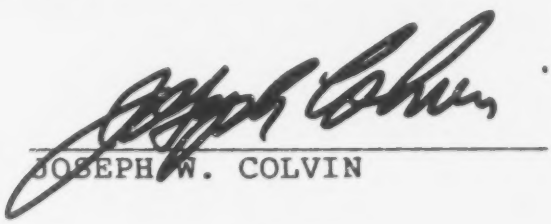
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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing have been served on all counsel of record, by mailing sets of same, on this 11 day of September, 1986.



JOSEPH W. COLVIN